IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1099 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B.M. GUPTA - Applicant(s)

Versus

THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR BM GUPTA for Applicant(s) : 1,
Mr. NC Sood, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 09/08/2005

ORAL JUDGMENT

1. The present Special Criminal Application has been preferred by the petitioner-third party, mainly praying for quashing and setting aside the order dated 18.08.2004 passed below Exh.9 in Sessions Case No.167/2004 by the

Addl. Sessions Judge, Court nO.8, Ahmedabad as well as for a direction to independent agency like CBI to investigate into the crime being I.CR No.25/2004 registered with Meghaninagar Police Station.

2. It has been submitted by ld. Counsel Mr. Gupta that before disposing of two group of Cri. Rev. Applications i.e. Cri. Rev. Application Nos. 625/2004 etc. & Cri. Rev. Application No. 655/2004 etc., the present Special Criminal Application should be heard and decided first or simultaneously he should be heard as the person interested in the proceedings while dealing with Cri. Revision Applications on hand filed by the accused persons praying discharge. According to Mr. Gupta, he should be permitted to address the Court on merits while dealing with the aforesaid two groups of Cri. Rev. Applications as the State or Investigating Agency has not cared to go into the larger interest of the society and environment of Metropolitan Magistrate Court was spoiled because of incidents in question.

3. It has been submitted by the petitioner -third party that the police has deliberately and intentionally not investigated the crime from correct perspective and has

not implicated some of the advocates who are the accused according to the petitioner, though have been arrested. So, the crime is required to be investigated further. He had made all attempts to place his point of view before the Court of Sessions by preferring an application Exh.9 and the ld. Sessions Judge has grossly erred in rejecting application Exh.9 vide impugned order.

4. I have considered the reasons assigned by the ld Addl. Sessions Judge for rejecting the application exh.9. The order of ld. Addl.Sessions Judge is a well-reasoned order and when this Court is in agreement with the reasons assigned by the ld. Addl. Sessions Judge for rejecting the application exh.9, there is no need to invoke powers of superintendence vested with the Court under Article 227 of the Constitution of India. The application exh.9 is based on some personal knowledge of the petitioner-third party who is an Advocate practising in the Metropolitan Magistrate Court as well as in the Court of Sessions and in this Court. The backbone of the application exh.9 is the scheme of section 39(1)(vii) of the CrPC, which runs as under:-

> “Sec.39(1)(vii) :
>
> Every person, aware of the commission of, or of the intention of any other person to commit, any offence

punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely;-

Sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention."

As the ld. Sessions Judge, while dealing with the above-quoted section, has observed that :-

" It must be noted here that, this is not an application giving any information either to the Magistrate or the police officer with regard to the intention or the commission of any offence. The alleged act committed has already been registered as an offence and therefore, if the 3rd party has any further information as regards the alleged conspiracy, he can have volunteered himself to be a witness in the matter and thereby, could have strengthened hands of investigating agency. But, approaching either the Court of ld. Metropolitan Magistrate and on its denial to entertain the application, to the Court of Sessions with a specific prayer of further investigation and to say that it is in exercise of its obligatory duty u/s 39 of the Cr.P.C. Is completely misconstruing the provisions of law. Therefore, on none of the three counts, this application for further investigation deserves to be allowed."

It has been further observed as under:-

" Furthermore, it needs to be observed that, although the application moved by the 3rd party applicant for the further investigation is not being found maintainable for the reasons discussed herein above however, from the facts of the instant case as this Court of Sessions has ample power to direct further investigation at an appropriate stage if the

> Court finds any such need to do so and if there are any defects in the investigation coming to the notice of this Court even during the trial, the same can be so directed and presently the matter is fixed on opening of the case u/s 226 of the Code of Criminal Procedure where the prosecuting agency is yet to open its case and bring it to the notice of the Court with what potential evidence it seeks to prove the alleged offences qua each accused and, therefore, the Court also on the basis of the material placed before it would like to decide at an appropriate stage as regards the necessity of directing the further investigation if the facts and circumstances so warrant."

5. It is not necessary to re-write the same reasons and by adopting the reasons assigned by the ld. Addl. Sessions Judge, this Court can very-well say that there is no substance in the petition nor the petitioner has a right to address the Court with Public Prosecutor when the Court is dealing with and disposing of the Revisions Applications preferred by the accused persons praying discharge from the offences being I.CR Nos. 25/2004 and 26/2004 (Sessions Case Nos. 167/2004 & 178/2004). The petitioner has no locus to address the Court in these proceedings and the State is very well there to take care of the crime registered by the police. It is always open for the Court to order further investigation if need be and even the investigating agency can exercise that privilege intimating the Court as per the scheme of section 173 of CrPC.

6. In view of above, there is no merits in the present Spl.Criminal Application and the same is hereby dismissed.

(C.K. BUCH, J)

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